

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
JUNE 2, 2011**

The Bismarck Board of Adjustment met on June 2, 2011 at 4:00 p.m. in the First Floor Conference Room in the City-County Office Building, 221 North 5th Street. Board members present were Michael Marback, Blair Ihmels, Dean Conrad, Ken Heier, and Jennifer Clark.

Member absent was Jeff Ubl.

Staff members present were Ray Ziegler (Building Official), Gregg Greenquist (Planner), and Kim Riepl (Office Assistant).

Others present were Dale Miller, Bismarck; Ania Diaz Gonzalez, Bismarck; Kay Plum, Bismarck.

MINUTES

Chair Marback asked for consideration of the April 7, 2011 minutes.

MOTION: A motion was made by Mr. Conrad and seconded by Mr. Ihmels to approve the minutes of the April 7, 2011, meeting as presented. With all members voting in favor, the minutes were approved.

VARIANCE – MILLER & SONS STORAGE & LEASING – 812 AIRPORT ROAD

Mr. Marback stated the applicant was requesting a variance to reduce the front yard setback from 15-feet to 9-feet for the purpose of constructing a storage facility. Mr. Marback indicated the site plan sketch and asked Mr. Miller if the building was actually located on 18th Street, to which Mr. Miller responded that was correct, but it is his understanding there are two physical addresses for the property, 812 Airport Road and 814 S. 18th Street. Mr. Miller also specified the buildings contain heated shops rather than storage units.

Mr. Conrad asked Mr. Ziegler if there was anything in the zoning ordinance that would limit the use of the property as shops rather than storage units. Mr. Ziegler explained the property is zoned MA-Industrial, and shops are a permitted use.

Ms. Clark asked Mr. Miller what necessitated the building being placed closer to the property line and Mr. Miller stated much of the need was for curb appeal, but he also explained there is an unrecorded water line that runs through his property. The original size of the building was to be 376-feet long, but because of the water line, he agreed to maintain a spacing of 20-feet to allow for the water line by splitting the building in two. This also meant he had to cut down on the size of the units. Mr. Marback asked if the water line runs between building #1 and building #2 and Mr. Greenquist confirmed that it does, running north and south, adding the main water line is on Airport Road but this one is not an individual water line as it serves several of the properties in the area. Mr. Heier asked if it was known where it connected to the main north/south water line and Mr. Miller replied it seems to run all the way north to Michigan Avenue but was unsure where it actually connected.

Mr. Ihmels asked how close the buildings would be to the north property line and Mr. Miller replied 2-feet. Mr. Ihmels asked Mr. Ziegler what requirements must be met if within 2-feet and Mr. Ziegler stated the building would have to have a 2-hour rating on it and Mr. Miller said that he has to have 5/8" sheetrock on both sides. He added he had cleaned 15 running feet of the adjacent property to the north of trees, pallets, and all kinds of garbage and junk for purposes of safety as well as access, and it also gave him some advantages in fire hydrant location and accessibility for the fire department. He emphasized his desire to have a neat and tidy appearance to his property and buildings.

The following findings were provided:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the MA zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is the minimum variance that will accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

MOTION: A motion was made by Mr. Ihmels to approve the request for the variance to reduce the front yard setback from 15-feet to 9-feet. The motion was seconded by Mr. Heier, and with Mr. Conrad, Mr. Heier, Mr. Ihmels, and Mr. Marback voting in favor, and Ms. Clark voting in opposition, the motion was passed.

Mr. Conrad stated for the record that he commended Mr. Miller for his desire and efforts in developing his property in such a way as to promote a clean appearance and improve the neighborhood.

VARIANCE – ANIA DIAZ GONZALEZ – 620 N. 21ST STREET

Mr. Marback stated the applicant was requesting a variance to reduce the front yard setback from 25-feet to 21-feet for the purpose of constructing a covered deck. Ms. Gonzalez explained the reason for the covered deck was to prevent water from coming in her door, which had been causing damage to her floor. She was requesting the variance to allow her to build a deck of 8-feet rather than 4-feet as it (a larger deck) would add more to the looks of the house and the neighborhood.

Mr. Heier referenced comments from an adjacent property owner who opposed the variance. The opposing comment was addressed. An aerial view of the neighborhood showed some other homes were also within the front yard setback.

Ms. Clark asked if there was anything less Ms. Gonzalez could do to exempt her from the setback requirement and Mr. Ziegler explained if the deck was left uncovered or if it was constructed less than 18" from the ground it could go further out, but with the roof, more restrictions apply. Mr. Heier added with the roof, it is treated more like a house.

Ms. Clark suggested that a deck of 4-feet did not offer much curb appeal or protection from the elements. Mr. Heier added that the flat front of the house also did not provide much curb appeal, and the lack of overhang was causing the problem with water getting in.

The following findings were provided:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the R10 zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is the minimum variance that will accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

MOTION: A motion was made by Mr. Heier to approve the request for the variance to reduce the front yard setback from 25-feet to 21-feet. The motion was seconded by Ms. Clark, and with all members voting in favor, the motion was passed.

VARIANCE – PAUL JUNDT – 7500 GRAY FOX LANE

Mr. Marback stated the applicant was requesting a variance to reduce the front yard setback requirement from 40-feet to 30-feet for the purpose of constructing a detached garage. Mr. Marback indicated the two letters of comment from adjacent property owners, neither of which objected to the requested variance.

Ms. Clark stated she had inspected the property and was unsure where the proposed detached garage would have to be placed to be in compliance with the setback as stated in the zoning ordinance. Mr. Greenquist offered an explanation, beginning by saying this is a rural residential district which means the front yard setback is 40-feet. He stated the applicant's lot contains a drain field in the back and has numerous tree rows. He indicated the aerial photo of the property and noted there is a low area, a drainage swale, directly south of the house. These items eliminate the potential areas for placement of the proposed garage, leaving only the front yard, where there exists a mature tree. Mr. Greenquist stated the applicant is requesting a variance of 10-feet to allow him to encroach on the 40-feet setback requirement, enabling him to

construct the garage without having to remove the mature tree. Ms. Clark asked about placement on the north side and the possible existence of utilities there, and Mr. Greenquist replied there is a side yard setback requirement of 15-feet, and there is no utility easement shown on the plat, but there may be service lines located in that area.

The question arose whether Mr. Jundt was the original owner of the house, and Mr. Conrad stated the applicant told him he was.

Mr. Heier commented he'd noticed no other accessory buildings out in front of the neighboring homes, most of them were either even with the principle structure or back further.

Ms. Clark identified the tree as the primary obstacle and stated she struggled with the idea of a tree preventing compliance to the ordinance. She asked Mr. Ziegler if she was missing something, and he confirmed the tree to be the basis of the need of the variance.

Ms. Clark questioned the historical ruling by the Board (on setbacks for accessory buildings in rural residential areas) and Mr. Marback replied decisions had been fairly consistent, with some being allowed. Mr. Ziegler recalled a similar request and a remark that was made at the time that if it wasn't more restrictive than what would be allowed in the city (which would be 25-feet) it was ok to allow it. Further discussion took place regarding similar requests and it was agreed that the tree, although it would be a shame to have to remove it, presented a marginal hardship.

Ms. Clark asked if the request must be taken to the County and Mr. Greenquist explained that because the property is within the 2-4 mile ETA, the County will be notified of the Board's decision and can then choose to either agree or disagree with it according to the joint jurisdiction legislation of 2009.

Staff Note: The County is notified only when development proposals are approved. Denials are not forwarded.

Lengthy discussion followed regarding the tree and any other possible placement of the proposed detached garage. It was the consensus of the Board members that it was unfortunate the applicant was unable to attend the meeting to provide more information.

The following findings were provided:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the RR zoning classification.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is the minimum variance that will accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance; however, it is doubtful that it would be injurious to the neighborhood or otherwise detrimental to the public welfare.

6. This property is in the ETA area of joint jurisdiction. Burleigh County will have the opportunity to comment.

MOTION: A motion was made by Mr. Conrad to deny the request for the variance to reduce the front yard setback from 40-feet to 30-feet. The motion was seconded by Mr. Heier, and with Ms. Clark, Mr. Heier, and Mr. Conrad voting in favor, and Mr. Ihmels and Mr. Marback voting in opposition, the motion to deny was passed.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned to meet again on July 7, 2011.

Respectfully Submitted,



Kim Riepl
Recording Secretary

APPROVED:



Michael Marback, Chair